IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

RSA NO. 38 Of 1996.

Date of decision: June 11, 2007.

Hari Ram. ……. Appellant.

Vs.

Kirpa Ram. ……. Respondent.

Coram

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the appellant: Mr. K.D. Sood, Advocate.

For the respondent: Mr. G.D. Verma, Sr. Advocate with
Mr. Romesh Verma, Advocate.

Surinder Singh, J (oral):

The instant appeal has been filed against the judgment dated 4.11.1995 passed in Civil Suit No.78/1 of 1992 by the Sub Judge Ist Class, Arki, District Solan, HP. It was admitted on 3.1.1997, on the following substantial questions of law:-

"1. Whether in view of the fact that there was a bonafide dispute between the parties, it was incumbent upon the courts to have got demarcated the property in terms of High Court Rules and Orders and the guidelines laid down by the Financial Commissioner before rejecting the same or allowing the relief of injunction?

2. Whether the report of the Local Commissioner Exhibit PW4/A as per orders of the Collector was correct and could be ignored by the courts below?

3. Whether in view of the documentary evidence PW4/A and the testimony of PWs 1 to 4, the court was right in not decreeing the suit and granting the discretionary relief of injunction?

4. Whether the oral and documentary evidence Exhibit PW4/A and the statement of PWs1, 2 and 4 have been misread and ignored from consideration and the relief of injunction ought to have been granted to the plaintiff in the facts and circumstances of the case?

Whether reporters of local Papers may be allowed to see the judgment? Yes.

I have heard the learned counsel for the parties and have meticulously examined the records of both the courts below.

The undisputed facts are that the plaintiff-appellant is the owner in possession of Khasra Nos. 159 and 160, measuring 1 bigha 15 biswa, situated at village Bairaili, Pargana Dhar, Tehsil Arki, , District Solan, H.P. The aforesaid land is abutting to Khasra No.158, which was at onetime owned and possessed by the defendant. According to the plaintiff-appellant, there was a `**Tuni**' tree over Khasra No.160, owned and possession by the plaintiff, which was cut by the defendant on 23.2.1992, without his consent and thus caused the damage to the land of the plaintiff. Therefore, the plaintiff claimed the relief of permanent injunction restraining the defendant causing any interference into his possession and also to restrain him from removing the Tuni tree. He further claimed an amount to the tune of Rs.100/- causing damage to the Tuni tree by cutting the same.

The defendant disputed the maintainability of the suit and denied the allegations. Further according to him, he had sold Khasra No.158 to one Nikda alias Daya Ram. A Tuni tree was standing over Khasra No.158, which was cut by him and a dispute arose with Shri Nikda Ram aforesaid, which was settled with him.

During the proceedings of the case, vide order dated 6.4.1992, both the parties agreed for the appointment of the Local Commissioner to demarcate the land. Accordingly, the Field Kanungo, darlaghat was appointed as Local Commissioner for the said purpose, who was ordered to be assisted by Halqa Patwari. The said Local Commissioner visited the spot on 5.7.1992. Both the parties were present on the spot alongwith panchayat members. Plaintiff did not produce the `**musabi**', according to him, it was with his counsel, who should also be present on the spot. The Local

Commissioner aforesaid adjourned the demarcation for 17.7.1992, but neither Hari Ram nor his counsel turned up on that day. The son of plaintiff was present and requested to demarcate the land on the next day. The request was allowed and on 18.7.92 the plaintiff was present alongwith Musabi. The land was demarcated, but the proceedings could not be completed on that day because of heavy rains and the matter was adjourned for 19.7.1992 to complete the report. The defendant was present, but the plaintiff absented himself. He was called on spot through a message, but he refused to associate as reported by the Local Commissioner. The report was filed in the trial court. The opportunity to file the objections were also given to the parties, but none of the parties filed any objections. After considering the report of the Local Commissioner, vide order dated 15.1.1993, the trial court observed that attitude of the plaintiff was non-cooperative during the demarcation, thus the order of appointment of the local Commissioner was revoked. The case was fixed for the written statement. After filing the written statement issues were framed. After framing the issues, plaintiff got appointed Sh. Jamna Dass, Retired Consolidation Officer, another Local Commissioner through the Collector, who is said to have visited the spot on 20.6.1993. Besides other witnesses he was examined as PW4 and placed on record certified copy of his report Ext.PW4/A, which did not record the presence of the defendant and it was objected to. The original report of the demarcation was not produced. On the entire appreciation of facts as derived from the statements of parties and other documents, the trial court came to the conclusion that the Tuni tree was standing on Khasra No.158 owned by Nikda Ram alias Daya Ram. When the defendant cut tree a dispute arose between him and Nikda Ram aforesaid, which was settled on 24.2.1992 and a compromise Ext.DW1/A was executed. The

plaintiff did not implead said Nikda Ram as a party but he had approached the court for the discretionary relief for injunction as aforesaid only against Sh. Kirpa Ram. In order to prove that the tree fell in the land owned by the plaintiff, there is no other evidence than that of PW4 above, whose report does not inspire confidence and it suffers from many lacunae. At the time of said demarcation, neither the real owner Shri Nikda Ram was present nor the defendant. They were not associated with the demarcation. There is also no mention of `**pucca**' points in the report of PW-4. His statement does not inspire confidence. Thus, the trial Court rightly dismissed the suit and in appeal the first appellate court has rightly appreciated this fact. Therefore, in these circumstances, it was not incumbent upon the courts below to get the land in question demarcated, more specifically when the plaintiff did not cooperate the Local Commissioner, already appointed by the Court and no allegations were made against him nor any objections were filed and no fresh request was made before the trial court. Relief claimed is dictionary relief and it cannot be granted in case the acts and deeds of the plaintiff are not bonafide.

As far as the second question is concerned, the report of the Local Commissioner Ext.PW4/A did not inspire confidence as aforesaid. There is nothing on record even to suggest remotely that the defendant was ever summoned by PW4 to be present at the demarcation. The presence of his son Dhanpat does not bind the defendant. The statements of parties regarding satisfaction of demarcation have not been recorded. The **pucca** points have not been shown in `**tatima**' Ext.PW4/B, which were otherwise required to be mentioned as per the instructions issued by the Financial Commissioner in Chapter-X below para-10 of the H.P. Land Records

Mannual. In these circumstances, the report of the said Local Commissioner is of no assistance to the plaintiff.

So far as points No.3 and 4 are concerned, in view of the aforesaid reasons when the plaintiff has failed to prove the existence of the Tuni tree, over the land owned and possessed by him and also in view of the concurrent findings of facts by the courts below, there is no reason to interfere with the said findings as I have found that neither the learned trial court nor the first appellate court has misread or misinterpreted the evidence or ignored from the consideration the statements of the parties. Therefore, for the reasons stated above the relief sought for cannot be granted to the plaintiff.

No other point urged before me.

Consequent upon the above findings, the appeal merits dismissal, which is accordingly dismissed with costs.

June 11, 2007.
(Pds)

(Surinder Singh)
Judge.